Aeronautical Repair Station Association

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July 24, 2008

The Honorable James Oberstar
Chairman
House Committee on Transportation and Infrastructure
2165 Rayburn House Office Building
Washington, DC 20515

The Honorable John Mica
Ranking Member
House Committee on Transportation and Infrastructure
2165 Rayburn House Office Building
Washington, DC 20515

The Honorable Jerry Costello
Chairman
House Subcommittee on Aviation
2165 Rayburn House Office Building
Washington, DC 20510

The Honorable Tom Petri
Ranking Member
House Subcommittee on Aviation
2165 Rayburn House Office Building
Washington, DC 20515

RE: Submission to Record for July 24, 2008 Hearing on Aviation Security

Dear Chairmen Oberstar and Costello and Ranking Members Mica and Petri:

We are writing to address the imperative issue of the Transportation Security Administration's (TSA) failure to comply with the "9/11 Commission Recommendation Act of 2007" (P.L. 110-53) and VISION 100 (P.L. 108-76) and the ensuing repercussions to be levied upon the aviation industry.

In Sec. 611 of VISION 100, TSA was instructed to issue a final rule to "strengthen oversight" for all Federal Aviation Administration (FAA) certificated part 145 repair stations, located both domestically and abroad. The agency was afforded 240 days to issue the final rule, which elapsed without such action.

The "9/11 Commission Recommendation Act of 2007" addressed the inaction in Sec. 1616, by mandating that the TSA issue the final rule within one year of enactment of the legislation (Aug. 3., 2007). However, unlike VISION 100, the legislation contained a "punishment" if the agency failed to meet the prescribed deadline. If the TSA is unable to issue a repair station security final rule by Aug. 3, 2008, no new foreign repair stations will be afforded FAA-certification. Renewals of existing certificates are exempt and applications in process prior to August 3 will be afforded standard review, including "consideration" for certification.

It is a foregone conclusion that the TSA will not issue a final rule by Aug. 3, 2008. On May 13, TSA Administrator Kip Hawley testified before the Senate Commerce, Science, and Transportation Committee that the final rule will not be issued by the date. Indeed as of today, July 24, the agency has yet to issue a Notice of Proposed Rulemaking.

ARSA understands Congress' frustration at the executive branch's failure to comply with law. However, punishing a beleaguered industry and workers (who have no power to compel TSA action) will not expedite

the rulemaking process. ARSA believes it is important that the leadership of the committee and subcommittee understand the facts regarding repair station security and the precarious precedent that will be set by punishing private industry for inaction by a government agency. Of emphasis in this case:

- Foreign repair stations are an essential component of the global aviation system. Without them there would be no international travel.
- Security standards do exist for repair stations based on their location. Such standards come from the Federal Aviation Administration (FAA), existing TSA regulations, and International Civil Aviation Organization (ICAO).
- Pushing TSA to quickly produce rules mandating additional security requirements will reallocate limited oversight resources from areas where the threat is greatest.
- Given the broad scope of the aviation maintenance industry, adequate time to review any proposed rules is essential; mandates for a speedy issuance of new rules undercut the rulemaking process and prove particularly damaging to impacted small businesses.
- Punishing private industry for the failings of a federal agency sets a damaging precedent.

Foreign repair stations are an essential component of the international aviation system. Without them there would be no international travel.

Foreign repair stations are an integral part of the international aviation industry. U.S. and foreign airlines, charter companies and general aviation operators, as well as aircraft manufacturers located around the world, depend on maintenance facilities for everything from repairing aircraft and components to maintaining supply chains. Aircraft manufacturers and maintenance companies establish overseas repair stations to service international customers and U.S.-based operators (airlines, charter companies and general aviation) who are operating internationally. Preventing the certification of new foreign repair stations will undermine the ability of these U.S. companies to participate in the global market and add to the current woes plaguing the domestic aviation industry.

The Chicago Convention of 1944 and ICAO standards require that the State of Registry (i.e., the country in which an aircraft is registered) oversee the maintenance performed on that aircraft and related components, regardless of where the work is performed.[1] Consequently, a U.S. registered aircraft requiring maintenance ***must*** have that work performed by an FAA-certificated maintenance provider. Similarly, when an aircraft of foreign registry requires maintenance (e.g., while in the United States), only a repair station certificated or validated by the relevant National Aviation Agency may perform the work. For example, only a European Aviation Safety Agency (EASA)-certificated repair station may perform maintenance on an aircraft of French registry.

Prohibiting or otherwise limiting the use of appropriately certificated repair stations overseas would make international travel impossible, since aircraft need some level of work performed when they land at their destination. The ramifications of this prohibition are far too vast to discuss in this document.

[1] *See*, ICAO Annex 8, Airworthiness, § 4.2.1(b).

Furthermore, foreign authorities may choose to take retaliatory action against U.S. counterparts for any restrictions put in place. The United States and the European Union are on the verge of concluding a new bilateral aviation safety agreement (BASA) that deals directly with the reciprocal certification of aviation maintenance facilities. By restricting the certification and use of foreign repair stations, Section 1616 would threaten years of work by FAA, State Department, and EASA negotiators to craft the new international agreement. There is also a risk that if the ban on the issuance of new certificates goes into effect, foreign governments could retaliate by restricting the use of U.S. repair stations.

Congress may not have considered the fact that restrictions such as those in Sect. 1616 may adversely affect the trade balance between the United States and other countries, specifically the European Union. There are only 698 FAA-certificated repair stations outside the United States; yet there are 1,200 EASA-certificated repair stations and numerous other NAA-certificated repair stations in the United States.

It is necessary for Congress to closely examine how the effects of Sect. 1616 will impact not only the traveling public, but the global aviation community and the ability of domestic companies, particularly small businesses, to compete in the worldwide marketplace.

Security standards do exist for repair stations based on their location. Such standards come from the FAA, existing TSA regulations, and ICAO.
Domestically, repair stations located on a commercial airport are required to have their personnel undergo criminal background checks under TSA regulations *if* they require unescorted access to the designated airport security identification display area (SIDA). Therefore, a repair station employee that performs line maintenance for an air carrier would have the same 10-year criminal background check requirement as an airline mechanic. Many repair stations voluntarily implement additional security procedures since the quality and safety of their work directly affects their business.

However, many repair stations are located miles away from airports and perform specialized work on component parts. These facilities are usually small-businesses; imposing undue security burdens would in effect put an entire sector of specialized workers out of business. ARSA members understand the need for safety and security; we ask that Congress recognize that the TSA must recognize these differences in repair facilities. While we all share the same goal—maintaining a high level of safety and security—security threats differ.

Internationally, each country must implement the types of security procedures to be followed just as they must do in the safety area. These are based on ICAO standards contained in Annex 17 and thus are very similar to TSA regulations. These include, but are not limited to:

- A national civil aviation security program with continuous threat monitoring and mandatory quality control procedures;
- Airport security programs for each airport serving international carriers;
- Air operator security programs;
- Background checks for persons implementing security control measures and persons with unescorted access to restricted security areas; and
- Periodic ICAO security audits.

Pushing TSA to quickly produce rules mandating additional security requirements will reallocate limited oversight resources from areas where the threat is greater.
The professionals at the TSA, ICAO and other countries' security oversight organizations have concluded that resources should be focused where the threat is greatest.

In testimony given by TSA Administrator Kip Hawley on October 16, 2007 before the Senate Committee on Commerce, Science, and Transportation, he mentioned several of the initiatives TSA is working to increase safety, from highways and rail, to aviation and cargo shipments. Threats exist throughout all modes of transportation, and TSA must be allowed the opportunity to prioritize its resources to those areas where the threat is greatest. During the October 16 hearing, Secretary Hawley testified that the TSA currently is committed to focusing its resources on "high priority items" facing national security interests. Administrator Hawley stated in his written testimony,

> …many of the rulemaking requirements mandated in the 9/11 Act do not adequately recognize the obligations that TSA must give the many stakeholders affected by proposed regulations and the general public…These requirements are time consuming but are time well spent to assure that our regulations achieve their objective in a way that is transparent to stakeholders and the public and does not adversely affect travel and commerce.

Given the broad scope of the aviation maintenance industry, adequate time to review any proposed rules is essential; mandates for a speedy issuance of new rules undercut the rulemaking process and prove particularly damaging to impacted small businesses.
Ensuring a deliberate and responsive rulemaking procedure is the cornerstone in the promulgation of federal agency action. Sect. 1616 threatens the viability of the other laws mandating a carefully calculated and reasoned rulemaking process.

By mandating the August 3, 2008 "due date," the law effectively gave the TSA and industry two options—support a hurried rulemaking to avoid penalty or ensure a deliberate rulemaking process but risk missing the mandated due date. Such a predicament is a dangerous one. This far-reaching rule requires adequate time for TSA deliberation, industry comment and agency response. It is better to do the process right rather than fast.

The majority of entities which stand to be impacted by this final rule are small businesses. The protections in the rulemaking process, namely the Administrative Procedure Act and the Regulatory Flexibility Act, are in place to protect the nation's small businesses. A rulemaking that is hurried in order to lessen the penalty levied upon the industry could potentially deny valuable input from these businesses and jeopardize thousands of jobs.

Punishing private industry for the failings of a federal agency sets a damaging precedent.
U.S. aviation companies and the thousands they employ do not have the power to compel TSA to issue the repair station security final rule, yet these persons will pay the price for the agency's inaction. Indeed, if the

industry was able to exert that much influence on the agency, it would be subject to criticism for being too close to the regulated entities.

Despite cooperation from the industry, TSA has yet to even issue a Notice of Proposed Rulemaking. As the implementation breakdown lies at the feet of TSA and not industry, Section 1616 is misdirected. ARSA is concerned that allowing such a scenario to unfold sets dangerous precedent for future law and subsequent rulemakings.

Conclusion

ARSA has communicated these points on numerous occasions, but felt it necessary at this important juncture to reemphasize the dynamics of the scenario which the industry faces.

Faced with the potentially damaging repercussions outlined above, ARSA respectfully urges the committee to either eliminate or delay the effective date for implementing the statutory prohibition on new foreign repair station certificates.

Should you have any questions or require additional information, do not hesitate to contact me.

Regards,

Marshall S. Filler
Managing Director and General Counsel